

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Lawrence Phillips and Helen Phillips

91-04019

Name of Respondents

Paul Eidsness and John Kinnard
& Company

REPRESENTATION

For Claimants at the hearing: John F. Archer, Esq. of Bangs, McCullen, Butler, Foye & Simmons, Rapid City, South Dakota.

For Respondents at the hearing: Ted S. Meikle, Esq. of Fredrikson & Byron, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed: December 18, 1991. Claimant's Submission Agreement signed on: December 13, 1991.

Joint Statement of Answer filed by Respondents on: April 22, 1992. Respondent, John G. Kinnard & Company's Submission Agreement signed on: April 15, 1992. Respondent, Paul Eidsness's Submission Agreement signed on: April 15, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: October 15, 1992 for two (2) sessions;
October 26, 1992 for two (2) sessions.

Hearing Location: Minneapolis, Minnesota.

CASE SUMMARY

Claimants Lawrence A. Phillips and Helen Phillips ("the Phillips") alleged that Respondent John G. Kinnard & Company ("Kinnard"), through its agent, Respondent Paul Eidsness ("Eidsness") acted in total disregard of the Phillips' investment objectives and needs, by recommending and insisting that they purchase units in the VMS Hotel Investment Trust ("VMS"). The Phillips' alleged that they purchased 1,050 units in the trust.

The Phillips' further alleged that the real estate investment was unsuitable for them. The Phillips' also alleged that two additional purchases of interest in Champs and Critef II were unsuitable investments for them.

Respondents Kinnard and Eidsness alleged that the investment in VMS fit the Phillips' investment objectives. Kinnard and Eidsness further alleged that the Phillips' alleged their investment objective to be income and not a great deal of risk, and that VMS did not appear to be very risky and it paid good income. Kinnard and Eidsness alleged that the Phillips' had adequate disclosure of the potential risks and rewards of their investment in VMS.

RELIEF REQUESTED

Claimants requested actual damages in the amount of \$10,000.00, plus interest and attorney's fees, plus punitive damages in the amount of \$50,000.00.

Respondents requested that the claims be denied entirely.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

Claimants amended their claim to include Champs and Critef II as two additional purchases which were unsuitable.

AWARD

After considering the pleadings, the testimony and the evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Kinnard & Company and Paul Eidsness, shall be and hereby are, jointly and severally liable for, and shall pay to the Claimants, Lawrence Phillips and Helen Phillips, compensatory damages in the amount of Ten Thousand Dollars (\$10,000.00);

2. Respondents Kinnard & Company and Paul Eidsness, shall be and hereby are, jointly and severally liable for, and shall pay to the Claimants, Lawrence Phillips and Helen Phillips, interest on the above stated sum of \$10,000.00 at the legal rate

in South Dakota, beginning to accrue on November 10, 1992;

3. Claimants, Lawrence Phillips and Helen Phillips, shall assign any and all interest and rights they hold in the VMS Hotel Investment Trust certificates, to the Respondents, Kinnard & Company and Paul Eidsness, jointly and severally;

4. The Claimant's request for damages regarding the two additional purchases in Critef II and Champs is denied;

5. The request for punitive damages is denied;

6. The request for attorney's fees is denied;

7. Each of the parties shall bear their own costs and expenses incurred, other than those specifically enumerated under forum fees set forth below.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions X \$500 = \$2000 minus hearing session deposit of \$500 = net \$1500 due.

Forum fees Assessed Against: Claimants Lawrence and Helen Phillips in the additional amount of \$500, and against Respondents John Kinnard & Company and Paul Eidsness, jointly and severally, in the amount of \$1000.

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Fees are payable to the National Association of Securities
Dealers, Inc.

By The Arbitration Panel:

Dated:

December 29, 1992

Arthur L. Sirkin, Esq.
Arthur L. Sirkin, Esq.
Chairperson
Public Arbitrator

December 24, 1992

Linn J. Firestone, Esq.
Linn J. Firestone, Esq.
Public Arbitrator

December 24, 1992

Bruce W. Hebel
Bruce W. Hebel
Industry Arbitrator

Date Award Served By The NASD: January 4, 1993